

FILED
Clerk
District Court

OCT 14 2004

For The Northern Mariana Islands
By _____
(Deputy Clerk)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DIONICIO A. LIZAMA
Defendant.

CRIMINAL CASE NO. 04-88032

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B), the United States and the defendant, DIONICIO A. LIZAMA, enter into the following plea agreement:

1. The defendant, Dionicio A. Lizama, will waive Indictment and plead guilty to an Information charging him with conspiracy to distribute 5 grams or more of methamphetamine "ice" between about March, 2004 and June 25, 2004, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B), and 846. The defendant understands that this offense is punishable by the following maximum penalties: (a) up to 40 years imprisonment without the possibility of parole and a mandatory minimum sentence of 5 years; (b) a fine of up to \$2,000,000.; (c) a mandatory special assessment of \$100; and (d) a term of supervised release of at least (4) years and up to a maximum of life.

2. The defendant understands that restitution and a term of supervised release following

1 incarceration may be imposed in addition to any other sentence. The defendant further
2 acknowledges that if he violates, at any time, any condition of supervised release, he could be
3 returned to prison for the full term of supervised release and the court is not required to grant
4 credit for any amount of time the defendant may have successfully completed on supervised
5 release.

6 3. At the time the guilty plea is entered, the defendant will admit that he is guilty of the
7 charge specified in Paragraph 1 of this agreement. The U.S. Attorney's Office for this District
8 will file no additional Title 21, drug charges based upon information now in our possession or
9 information later provided by the defendant under the conditions set forth below. If this office
10 becomes aware of evidence of additional crimes warranting criminal prosecution, all information
11 in our possession could be used in such a prosecution.

12 4. Defendant agrees to fully and completely cooperate with the United States Attorney's
13 Office and other law enforcement agencies in the investigation of criminal activity within the
14 District of The Northern Mariana Islands and elsewhere.

15 5. Full and complete cooperation with the United States Attorney's Office and law
16 enforcement agencies shall include but is not limited to the following:

- 17 A. providing intelligence information;
- 18 B. arranging for the purchases of controlled substances or other evidence by
19 defendant and/or undercover agents;
- 20 C. providing the introduction of undercover agents to controlled substance
21 traffickers and/or other targets of the investigation;
- 22 D. providing information to secure search warrants, if feasible;
- 23 E. providing testimony before the federal grand jury and, if necessary,
24 testimony before any court as a witness in any prosecutions growing out of
25 this or any related investigation;
- 26 F. providing any documents or other items in the defendant's custody,
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1 possession or under the defendant's control that are relevant to this or any
2 related investigation;

3 G. making defendant available for interview and debriefing sessions by
4 government attorneys and law enforcement agents upon request;

5 H. recording conversations related to any investigation as requested; and

6 I.. engaging in and conducting other activities as directed by the law
7 enforcement agents in charge of the investigation.

8 6. The defendant will provide complete and truthful information to the government, law
9 enforcement officers and the federal grand jury conducting this investigation. The defendant will
10 answer all questions concerning this investigation and will not withhold any information. The
11 defendant will neither attempt to protect any person or entity through false information or
12 omission, nor falsely implicate any person or entity. The defendant will at all times tell the truth
13 and nothing but the truth during any interviews or as a witness, regardless of who asks the
14 questions - the prosecutors, defense attorneys, investigating agents, probation officers or the
15 judge. Since the United States insists upon the defendant telling the truth and nothing but the
16 truth during any court proceeding, grand jury proceeding or government interview related to this
17 case, failure to provide complete and truthful information at any such time will constitute a
18 breach of this agreement.

19 7. No testimony or other information provided by the defendant pursuant to this
20 agreement to the United States Attorney's Office, federal or state law enforcement officers,
21 employees of the government, or to the federal grand jury conducting this investigation, or any
22 information directly or indirectly derived from such testimony or other information, will be used
23 against the defendant for the purpose of bringing additional Title 21 drug-related charges in the
24 District of the Northern Mariana Islands, provided the defendant does not violate or withdraw
25 from the terms of this agreement pursuant to which the grant of "limited use immunity" is being
26 made. However, such testimony or other information may and will be used
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- 1 A. in a prosecution for perjury or giving a false statement;
- 2 B. to impeach the defendant's credibility, for purposes of cross-examination
- 3 and for purposes of a rebuttal case in any proceeding;
- 4 C. in any asset forfeiture matter;
- 5 D. by the court or probation office at any time, including at the time of the
- 6 defendant's guilty plea and sentencing in this matter and to determine the
- 7 length of the defendant's sentence; and
- 8 E. in any proceeding concerning a breach of this agreement.

9 The "limited use immunity" granted by this agreement extends only to acts committed by the
10 defendant on or before the date shown at the top of this agreement and does not apply to any
11 prosecution for acts committed by the defendant after that date. Further, this agreement grants no
12 immunity whatsoever for any information provided by the defendant pertaining to any death,
13 murder, rape or forcible felony. It is agreed that information provided by the defendant in the
14 course of any "proffer" may be relied upon and considered under the terms and conditions of this
15 agreement. The defendant understands the obligation of the United States to provide all
16 information in its file regarding the defendant to the United States Probation Office and the court.

17 8. The defendant shall not reveal or discuss the existence or conditions of this agreement
18 or the defendant's cooperation to any person other than the defendant's attorney and law
19 enforcement personnel involved in this investigation. Nor shall the defendant or any agent of the
20 defendant disclose to any person, directly or indirectly, other than to the defendant's attorney,
21 without prior written authorization from the government, the true identity or occupation of any
22 law enforcement personnel participating in this investigation in an undercover capacity or
23 otherwise. Nor shall the defendant or any agent of the defendant disclose to any person, without
24 prior written approval of the government, the location of investigative offices, surveillance
25 locations, or the nature of investigative techniques used by agents in this investigation. Nothing
26 in this paragraph is intended to restrict or prohibit the defendant from providing complete and
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1 truthful testimony in any court proceeding. Furthermore, this agreement does not prohibit the
2 defendant from speaking with an attorney for a party adverse to the government in any litigation
3 concerning the defendant's possible testimony in that litigation. While the defendant is under no
4 obligation to speak with such an attorney, the defendant is free to do so if the defendant chooses.
5 That decision rests solely with the defendant as it does with any witness.

6 9. Nothing in this agreement requires the government to accept any cooperation or
7 assistance that the defendant may offer or propose. The decision whether and how to use any
8 information and/or cooperation that the defendant provides (if at all) is in the exclusive discretion
9 of the United States Attorney's Office.

10 10. The United States makes no promises as to the sentence to be imposed. The District
11 Court will impose sentence in accordance with the U.S. Sentencing Guidelines, which establish a
12 sentencing range based on factors determined to be present in the case. Those factors may
13 include, but are not limited to, the quantity of drugs involved, the defendant's role in the offense,
14 his criminal history, his acceptance or lack of acceptance of responsibility and other
15 considerations. During plea negotiations the parties may have discussed how various factors
16 could impact on the sentence and the applicability of potential sentencing ranges. The parties
17 agree, however, that these discussions **did not** result in any express or implied promise or
18 guarantee concerning the actual sentence to be imposed. The defendant further understands that
19 he will have no right to withdraw his guilty plea if the sentence imposed or the application of the
20 U.S. Sentencing Guidelines is other than he hoped for or anticipated.

21 11. The defendant hereby waives any right he may possess to have sentencing factors
22 charged by indictment and found by a jury beyond a reasonable doubt, and expressly agrees and
23 consents that any and all facts relevant to sentencing shall be determined by the Court by a
24 preponderance of the evidence.

25 12. The parties stipulate and agree that the U.S. Sentencing Guidelines are appropriately
26 applied as follows:
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- 1 A. The parties stipulate and agree that pursuant to USSG §§1B1.8(a) and
2 2D1.1, the appropriate base offense level is 26, based upon the defendant's
3 involvement in between 5 and 20 grams of pure methamphetamine.
- 4 B. The parties agree that it is proper for the Court to consider as relevant
5 conduct, in connection with the determination of the appropriate base
6 offense level for Count 1, information contained in the government's file
7 and provided by the defendant under the terms of this agreement.
- 8 C. The parties stipulate and agree that there should be no upward or downward
9 adjustment for his role in the offense under USSG §§3B1.1 and 3B1.2.
- 10 D. The parties stipulate and agree that as of the date of this agreement,
11 defendant appears to qualify for a two- level downward adjustment for
12 acceptance of responsibility based upon his early agreement to plead guilty
13 to the charge named in paragraph 1. However, the government shall be free
14 to contest this adjustment should the defendant subsequently fail to
15 continue to accept responsibility by failing to pay the special assessment; by
16 providing false information to the court, probation office, or the
17 government; by unlawfully using controlled substances; by attempting to
18 obstruct justice; by breaching this plea agreement; or by acting or failing to
19 act in any way that is inconsistent with the granting of the adjustment under
20 USSG § 3E1.1(a). If the defendant continues to accept responsibility and
21 the court grants a two-level reduction under USSG §3E1.1(a), the United
22 States agrees to make a motion under USSG §3E1.1(b) for an additional
23 one-level reduction, acknowledging the timeliness of the defendant's
24 decision to plead guilty. By making a motion under USSG §3E1.1(b) the
25 United States does not waive any potential objection to the application of
26 USSG §3E1.1(a).

1 13. The defendant, his attorney and the United States may make whatever comment and
2 evidentiary offer they deem appropriate at the time of the guilty pleas, sentencing or any other
3 proceeding related to this case, so long as the offer or comment does not violate any other
4 provision of this agreement. The parties are also free to provide all relevant information to the
5 probation office for use in preparing the pre-sentence report.

6 14. At or before the time of sentencing, the United States will advise the court of any
7 assistance, or lack thereof, provided by the defendant in the investigation of criminal activity
8 within the District of the Northern Mariana Islands and elsewhere, or in the prosecution of other
9 persons who have committed criminal offenses. The United States may, but shall not be required
10 to, make a motion pursuant to § 5K1.1 of the United States Sentencing Guidelines requesting the
11 court to depart below the sentencing range called for by the sentencing guidelines in the event
12 defendant provides "substantial assistance." This decision shall be in the sole discretion of the
13 United States Attorney's Office and will be made independently with respect to each applicable
14 count to which defendant has agreed to plead guilty. The government may make this motion as to
15 any, all or none of the counts to which defendant has agreed to plead guilty. No downward
16 departure for "substantial assistance" may be made absent a government motion under § 5K1.1.

17 15. The United States may, but shall not be required to, make a motion pursuant to 18
18 U.S.C. § 3553(e) allowing the court to depart below the minimum mandatory sentence required by
19 statute for any offense to which defendant has agreed to plead guilty in the event the defendant
20 provides "substantial assistance." This decision shall be in the sole discretion of the United States
21 Attorney's Office. The defendant understands and agrees that any motion for "substantial
22 assistance" under USSG § 5K1.1, as described above, is independent from a possible motion
23 under this paragraph. The United States may make either, neither or both motions. This decision
24 shall be in the sole discretion of the United States Attorney's Office. No downward departure
25 below a mandatory minimum may be made absent a government motion under 18 U.S.C.
26 § 3553(e) separate from a motion under USSG § 5K1.1.

1 16. It is understood and agreed that no motion for downward departure shall be made,
2 under any circumstances, unless the defendant's cooperation is deemed "substantial" by the United
3 States Attorney's Office and defendant has fully complied with all provisions of this plea
4 agreement. The United States has made no promise, implied or otherwise, that a departure motion
5 will be made or that defendant will be granted a "departure" for "substantial assistance." Further,
6 no promise has been made that a motion will be made for departure even if the defendant
7 complies with the terms of this agreement in all respects, but has not, in the assessment of the
8 United States Attorney's Office, provided "substantial assistance."

9 17. The United States will consider the totality of the circumstances, including but not
10 limited to the following factors, in determining whether, in the assessment of the United States
11 Attorney's Office, the defendant has provided "substantial assistance" which would merit a
12 government request for a downward departure and the government's view as to the appropriate
13 extent of any departure:

- 14 A. the government's evaluation of the significance and usefulness of any
15 assistance rendered by the defendant;
- 16 B. the truthfulness, completeness, and reliability of any information or
17 testimony provided by the defendant;
- 18 C. the nature and extent of the defendant's assistance;
- 19 D. any injuries suffered or any danger or risk of injury to the defendant or
20 family members resulting from any assistance provided;
- 21 E. the timeliness of any assistance provided by the defendant; and
- 22 F. other benefits received by the defendant in the plea agreement.

23 18. The defendant understands and agrees that the government has gathered extensive
24 evidence in the course of its investigation and further, that no departure motion will be made on
25 the basis of information or cooperation provided by the defendant if such information or
26 cooperation is merely cumulative of information already in the possession of the United States.

1 19. It is understood and agreed that even if a motion for departure is made by the
2 government based upon the defendant's "substantial assistance," the final decision as to how
3 much, if any, reduction in sentence may be warranted because of that assistance rests solely with
4 the district court.

5 20. The defendant agrees and understands that he shall not be permitted to withdraw his
6 plea of guilty or otherwise fail to comply with the terms of this agreement in the event he is not
7 satisfied with the government's "substantial assistance" motion decision or the court's sentence in
8 the case.

9 21. The defendant agrees to pay a special assessment of \$100 as required by 18 U.S.C.
10 § 3013. Payment must be in the form of a money order made out to the "U.S. District Clerk of
11 Court." The special assessment must be paid before this signed agreement is returned to the U.S.
12 Attorney's Office. If defendant fails to pay the special assessment prior to sentencing, defendant
13 stipulates that a downward adjustment for acceptance of responsibility under USSG § 3E1.1 is not
14 appropriate unless the court finds defendant has no ability to pay prior to the sentencing.

15 22. The defendant agrees to fully and truthfully provide the U.S. Attorney's Office with
16 any information or documentation in his possession or control regarding his financial affairs and
17 agrees to submit to a debtor's examination if requested. The defendant agrees to provide this
18 information whenever requested until such time any judgment or claim against him, including
19 principal and interest, is satisfied in full. This information will be used to evaluate his capacity to
20 pay any claim or judgment against him.

21 23. The defendant shall not violate any local, state or federal law during the pendency of
22 this agreement. Any law violation, with the exception of speeding or parking tickets, committed
23 by the defendant will constitute a breach of this agreement and may result in the revocation of the
24 entire agreement or any of its terms. The defendant or his attorney shall notify this office within
25 48 hours if the defendant is questioned, charged or arrested for any law violation.

26 24. If the defendant violates **any** term or condition of this plea agreement, in **any** respect,
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1 the entire agreement will be deemed to have been breached and may be rendered null and void by
2 the United States. The defendant understands, however, that the government may elect to proceed
3 with the guilty plea and sentencing. These decisions shall be in the sole discretion of the United
4 States. If the defendant does breach this agreement, he faces the following consequences: (1) all
5 testimony and other information he has provided at any time (including any stipulations in this
6 plea agreement) to attorneys, employees or law enforcement officers of the government, to the
7 court, or to the federal grand jury, may and will be used against him in any prosecution or
8 proceeding; (2) the United States will be entitled to pursue additional charges against the
9 defendant and to use any information obtained directly or indirectly from the defendant in those
10 additional prosecutions; and (3) the United States will be released from any obligations,
11 agreements or restrictions imposed upon it under this plea agreement.

12 25. After conferring with his attorney and after being advised of his appeal rights, the
13 defendant knowingly and voluntarily waives his right to appeal his conviction and the sentence
14 imposed. The defendant retains his right to appeal or contest his sentence in the following limited
15 circumstances: (1) if the sentence imposed exceeds the maximum statutory penalty; or (2) if the
16 sentence is unconstitutionally defective. Further, after being fully advised of the implications, the
17 defendant knowingly and voluntarily waives his right to file post-conviction relief actions,
18 including actions pursuant to 28 U.S.C. §§ 2255 and 2241, *coram nobis* actions and motions to
19 reconsider or reduce his sentence. This waiver does not, however, prevent him from challenging
20 the effectiveness of his attorney after conviction and sentencing. Defendant does not have any
21 complaints at this time about the effectiveness of his attorney. The waivers set out above relate to
22 any issues which now exist or which may arise in the future. The defendant agrees to these
23 waivers in order to cause the government to accept the provisions of this plea agreement, to avoid
24 trial, and to have his case finally concluded. The defendant understands that at the conclusion of
25 his sentencing hearing, the court will note that the defendant's appeal rights are limited by this
26 waiver.

1 26. The defendant waives all claims he may have based upon the statute of limitations,
2 the Speedy Trial Act, and the speedy trial provisions of the Sixth Amendment to the Constitution.
3 The defendant also agrees that any delay between the signing of this agreement and the final
4 disposition of this case constitutes excludable time under 18 U.S.C. § 3161 *et seq.* (the Speedy
5 Trial Act) and related provisions.

6 27. The defendant understands that his sentencing may be continued, at the sole discretion
7 of the United States, until after the indictment and trial of any associates involved. This will also
8 enable the Court to determine the full degree of the defendant's cooperation. The defendant
9 therefore waives any right he may have to any speedy sentencing and hereby agrees to any
10 continuance of his sentencing date as it may become necessary.

11 28. In the event the defendant is called upon to testify on behalf of the government in any
12 proceeding, the defendant agrees to waive any and all claims for witness fees and/or expenses
13 which might otherwise be due the defendant under any statute, regulation or other provision of
14 law pertaining to such fees and/or expenses.

15 29. Any agreement to forego filing charges is conditional upon final resolution of this
16 matter. If this agreement is revoked or the defendant's conviction is ultimately overturned, the
17 United States retains the right to file charges which were not filed because of this agreement.
18 Uncharged offenses may be filed if: (1) the plea agreement is revoked, or (2) the defendant
19 successfully challenges his conviction through a final order in any appeal, cross-appeal, habeas
20 corpus action or other post-conviction relief matter. A final order is an order not subject to further
21 review or an order which no party challenges. The United States may reinstate any dismissed
22 counts or file any uncharged offenses within 90 days of the filing date of the final order. The
23 defendant waives all constitutional and statutory speedy trial rights he may have. The defendant
24 also waives all statute of limitations or other objections or defenses he may have related to the
25 timing or timeliness of the filing or prosecution of charges referred to in this paragraph.

26 30. The defendant understands and agrees that, consistent with the provisions of 18
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1 U.S.C. § 3143, he will be taken into or remain in custody at the conclusion of the guilty plea
2 hearing and will be detained pending sentencing. This is regardless of whether his plea is
3 immediately accepted or formal acceptance is deferred until a later date.

4 31. The defendant understands that to establish the offense of conspiracy to distribute
5 methamphetamine "ice", a violation of Title 21, United States Code, Sections 841(a)(1),
6 841(b)(1)(B) and 846, the government must prove each of the following elements beyond a
7 reasonable doubt:

8 First: Between about March 2004 and June 25, 2004, two or more
9 individuals, knowingly and intentionally agreed and conspired to
10 distribute to others a quantity of methamphetamine "ice", a
11 Schedule II controlled substance, in the District of the Northern
12 Mariana Islands.

13 Second: The defendant voluntarily and intentionally joined the agreement
14 and understanding to distribute methamphetamine "ice", either at
15 the time the agreement was first reached or at some later time while
16 it was still in effect.

17 Third: At the time that the defendant joined in the agreement, he knew that
18 the purpose of the agreement was to distribute methamphetamine
19 "ice".

20 Fourth: In the course of the conspiracy, the defendant distributed, possessed
21 with intent to distribute, and was responsible for over 5 grams of
22 methamphetamine in the form commonly known as "ice".

23 32. The defendant acknowledges that he has read each of the provisions of this entire plea
24 agreement with the assistance of counsel and understands its provisions. He has discussed the
25 case and his constitutional and other rights with his attorney. The defendant understands that by
26 entering a plea of guilty he will be giving up his right to plead not guilty; to trial by jury; to
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1 confront, cross-examine and compel the attendance of witnesses; to present evidence in his
2 defense; to remain silent and refuse to be a witness against himself by asserting his privilege
3 against self-incrimination and to be presumed innocent until proven guilty beyond a reasonable
4 doubt. The defendant agrees that his attorney has represented him in a competent manner and has
5 no complaints about that lawyer's representation. The defendant states that he is not now on or
6 under the influence of any drug, medication, liquor, or other intoxicant or depressant, whether
7 prescribed by a physician or not, which would impair his ability to fully understand the terms and
8 conditions of this plea agreement.

9 33. The defendant acknowledges that he is entering into this plea agreement and is
10 pleading guilty freely and voluntarily because he is guilty and for no other reason. The defendant
11 further acknowledges that he is entering into this agreement without reliance upon any discussions
12 between himself and the government (other than those specifically described in this plea
13 agreement), without promise of benefit of any kind (other than any matters contained in this plea
14 agreement) and without threats, force, intimidation, or coercion of any kind. The defendant
15 further acknowledges his understanding of the nature of the offense to which he is pleading guilty,
16 including the penalties provided by law.

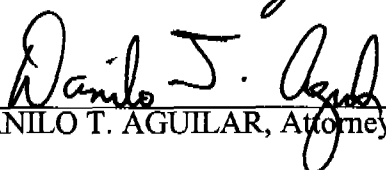
17 34. The defendant further understands that he will be adjudicated guilty of the offense to
18 which he will plead guilty and may thereby be deprived of certain rights, including but not limited
19 to, the right to vote, to hold public office, to serve on a jury and to possess firearms. The
20 defendant understands that the government reserves the right to notify any state or federal agency
21 by whom he is licensed, or with whom he does business, of the fact of his conviction.

22 35. This agreement, **valid only if executed on or before August 13, 2004**, supersedes
23 any prior understandings, promises or conditions between the government and defendant. No
24 other promises of any kind, express or implied, have been made to the defendant by the United
25 States or its agents and no additional agreement may be entered into unless in writing and signed
26 by all parties.

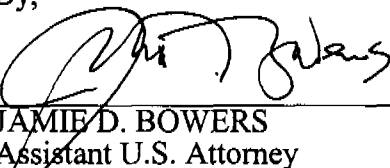
1 **The undersigned defendant, with advice of counsel, accepts the terms of this plea**
2 **agreement.**

3 **The undersigned Assistant United States Attorney accepts the terms of the executed plea**
4 **agreement.**

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6 Dated: 7/30/04 
7 DIONICIO A. LIZAMA, Defendant

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9 Dated: 7/30/04 
10 DANILO T. AGUILAR, Attorney for Defendant

11 LEONARDO M. RAPADAS
12 United States Attorney
13 District of the Northern Mariana Islands
14 By,

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28 Dated: 8/13/04 
 JAMIE D. BOWERS
 Assistant U.S. Attorney